

1502912 (Refugee) [2016] AATA 3611 (18 March 2016)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1502912
COUNTRY OF REFERENCE:	Bangladesh
MEMBER:	Glen Cranwell
DATE:	18 March 2016
PLACE OF DECISION:	Brisbane
DECISION:	The Tribunal affirms the decision not to grant the applicant a protection visa.

Statement made on 18 March 2016 at 10:17am

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration on 6 February 2015 to refuse to grant the applicant a protection visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of Bangladesh, applied for the visa [in] June 2014. The delegate refused to grant the visa [in] February 2015.
3. The applicant appeared before the Tribunal on 3 March 2016 give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Bengali and English languages.
4. The applicant was represented in relation to the review by his registered migration agent.

CONSIDERATION OF CLAIMS AND EVIDENCE

CIRCUMSTANCES PREVENTING THE GRANT OF THE VISA

5. Under s.65(1) of the Act, the Minister (or the Tribunal on review) must refuse to grant a visa if the grant is prevented by s.91WA. Section 91WA(1) requires the Minister to refuse to grant a protection visa to an applicant who provides a bogus document as evidence of their identity, nationality or citizenship, or has destroyed or disposed, or caused the destruction or disposal of, documentary evidence of their identity, nationality or citizenship. However, that requirement will not apply if the applicant has a reasonable explanation for the provision, destruction or disposal, and either provides relevant documentary evidence or has taken reasonable steps to provide such evidence: s.91WA(2). Section 91WA and the definition of 'bogus document' are extracted in the attachment to this decision. The provisions of s.91WA of the Act were introduced into the Act with effect from 18 April 2015 and apply to all applications currently before the Tribunal as at that date,¹ including this application.

MANDATORY CONSIDERATIONS

6. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal has taken account of policy guidelines prepared by the Department of Immigration –PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and relevant country information assessments prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

IS THE GRANT OF THE VISA PREVENTED BY S.91WA?

7. The applicant provided the Department with a Birth Certificate in the name of [Mr A], indicating he was born on [Date 1] (folio 88 of the Department file). He also provided a Nationality Certificate in this name (folio 87) and a Secondary School Certificate Examination listing the same name and date of birth (folio 86).
8. The applicant also provided the Department with a Birth Certificate in the name of [applicant name], indicating that he was born on [Date 2] (folio 85). He also provided a Nationality

¹ Section 2 of the *Migration Amendment (Protection and Other Measures) Act 2015*

Certificate in this name (folio 84) and a Secondary School Certificate Examination listing the same date of birth but in the name of [Mr A] (folio 83).

9. At the hearing, the Tribunal put the information contained in the preceding paragraphs to the applicant. The Tribunal noted that it is aware that [acronym] is an abbreviation of [name]. The Tribunal asked the applicant to provide his name and date of birth.
10. The applicant stated he was [Mr A], born on [Date 1].
11. The Tribunal asked the applicant why he submitted a birth certificate with a date of birth of [Date 2] if his date of birth was [Date 1]. The applicant stated that he started school in [Date 2] but was born in [Date 1].
12. The Tribunal asked the how he came to obtain a birth certificate listing his date of birth as [Date 2]. The applicant stated that he requested a copy of his birth certificate by email when he first came to Australia. He had no control over what was sent. He did not check whether the document was accurate.
13. The Tribunal asked who he requested provide a copy of his birth certificate. The applicant stated that he asked a family member. The family member went to a shop, and the document was scanned and sent by email.
14. The Tribunal put to the applicant that it might consider the birth certificate listing a date of birth of [Date 2] to be a bogus document. The applicant stated that he got his original documents posted to him. He provided the Tribunal (at the hearing) with an apparent original of the Secondary School Certificate Examination listing his date of birth as [Date 1].
15. The Tribunal put to the applicant that if it accepted the birth certificate listing his date of birth as [Date 1] was an authentic document, it might find that the birth certificate listing his date of birth as [Date 2] to be a bogus document. The applicant stated that this was discussed at the detention centre. It might have been because the correspondence was sent by email. He has since had documents sent by post rather than by email.
16. The Tribunal explained the provisions of s.91WA to the applicant. The applicant stated that he came to the realisation that there was an error with dates. His father did not know there was a mistake. The mistake might have been made at the shop where his father went. He suggested sending the document by post.
17. The Tribunal asked the applicant what sort of mistake he thought was made at the shop. The applicant stated that he had a discussion with his case manager. He asserted that his date of birth was in [Date 1]. His case manager pointed out that the birth certificate listed a date in [Date 2]. The mistake might have been made by the staff at the shop. He suggested obtaining the document by post.
18. The Tribunal asked the applicant what sort of shop his father went to. The applicant stated that his father went to a [certain shop]. The scanned in and sent the document by email for a fee. He is not sure what the fee was.
19. The Tribunal asked the applicant what sort of mistake the shop made such that the birth certificate that was scanned and emailed displayed a completely different date of birth. The applicant stated that he discussed this with his case manager. He wanted to provide the correct date. He arranged for his birth certificate to be posted. He invited the Tribunal to verify his birth certificate online.

20. The Tribunal put to the applicant, using the procedure in s.424AA, information provided in his entry interview [in] June 2013. In particular, the applicant during this interview had provided a date of birth of [Date 2] (folio 79). This information was relevant because it suggested that the applicant had initially represented that his date of birth was [Date 2], which might lead it to form the view that the applicant had deliberately provided a birth certificate with this date on it. This could form part of the basis for the Tribunal to refuse the application for a protection visa under s.91WA. The Tribunal invited the applicant to comment, and advised that he was entitled to request further time to comment if he wished.
21. The applicant stated that all the other details on the birth certificate were correct. There was no mistake with his father's name or his village. When he was in [Detention centre 1], he provided an accurate date of birth. He did not check the content of the email. All the other details on the certificate were correct. When he realised the mistake in the date of birth, he explained the position to his case officer, "[name]", who assured him that the matter had been sorted out.
22. The Tribunal asked the applicant if there were any other matters he wished to raise. The applicant stated that he did not recall all the details he provided at the entry interview. He went to [name] detention centre 10-15 days after the entry interview. The mistake was pointed out to him. His real date of birth is in [Date 1]. When he was in [Detention centre 1], he realised his mistake had not been rectified. It was suggested that he should have the document delivered by post rather than email.
23. The Tribunal invited the representative to make oral submissions at the conclusion of the hearing. The representative declined this invitation, and instead requested 14 days to provide submissions after the hearing. The Tribunal accepted this request.
24. The representative subsequently requested an extension of 7 days in which to lodge post-hearing submissions. The reason given was "unavoidable work commitments". The Tribunal has declined this request for an extension. The representative has already had the opportunity of providing 26 pages of written submissions (excluding attachments) prior to the hearing. The Tribunal notes that the concerns about the applicant's identity was a matter explicitly raised by the delegate beginning on the first page of the decision record, albeit not in the context of s.91WA which was not then in existence. The Tribunal gave the representative an opportunity to present submissions orally at the hearing, and then an opportunity to do so in writing during a period of 14 days after the hearing. The Tribunal considers that the representative has had more than a reasonable opportunity to provide submissions on this issue, and does not regard unspecified work commitments as amounting to grounds for providing further time.
25. As no further written submissions were lodged during the period allowed, the Tribunal has proceeded to make a decision.

26. **Assessment**

27. The Tribunal has considered whether the applicant's application for a protection visa is required to be refused under s.91WA of the Act on the basis that he provided a bogus document to the Department.
28. *Did the applicant provide a bogus document as evidence of his identity?*
29. The first question to be determined in this regard is whether any documents provided or caused to be provided by the applicant are 'bogus documents' within the meaning of that term in s.5(1) of the Act.

30. The Tribunal finds that the applicant provided the Department with a birth certificate in the name of [applicant name] with a date of birth of [Date 2] as evidence of his identity. At the hearing, the applicant told the Tribunal that his name was [Mr A] and his date of birth was [Date 1].
31. The Tribunal finds that the birth certificate listing a date of birth of [Date 2] provided to the Department by the applicant purports to have been, but was not, issued in respect of the applicant as contemplated by paragraph (a) of the definition of 'bogus document', and that such a document is a 'bogus document' for the purposes of that definition in s.5(1) of the Act.
32. For completeness, it is not necessary for the Tribunal to attempt online verification of the birth certificate listing a date of birth of [Date 1], as the Tribunal has not found this document to be a bogus document.
33. *Does the applicant have a reasonable explanation for providing the bogus document?*
34. The second question to be determined in relation to the application of s.91WA to this case is whether the applicant has a reasonable explanation for providing or causing to provide the bogus document.
35. The applicant provided two explanations at the hearing. The first was that a mistake must have been made at the [shop] where the applicant's father took his birth certificate to be scanned and sent by email. The applicant repeatedly implied that such a mistake would not have been made if the birth certificate had been sent by post, as was the second birth certificate. The Tribunal does not accept this explanation as being plausible. When the birth certificates at folios 88 and 85 of the Departmental file are compared, it is clear that the documents contain a number of formatting differences, as well as differences in the name and date of birth. The Tribunal cannot conceive of any scanning error that could have converted the document at folio 88 into the document at folio 85. For the purposes of clarity, the differences are more than merely a change in the birth date, and encompass the formatting of the document as well. The [shop] would have had to create an entirely new document, and the Tribunal does not consider that it is plausible that this would have been done other than at the behest of the applicant's father, which would be something other than a "mistake". The applicant indicated that all of the other details on the document at folio 85 are correct. This leads the Tribunal to conclude that the possibility, not articulated by the applicant at the hearing, of the [shop] mixing up documents and sending another person's birth certificate by mistake is also implausible, as the other details would not be correct if this had occurred. The Tribunal finds that the applicant's father gave the original of the document at folio 85 to be scanned, and an identical likeness was emailed and subsequently provided by the applicant to the Department.
36. The applicant's second explanation was that he did not check the dates on the birth certificate before providing it to the Department, and he was unaware of the mistake. The Tribunal also does not accept this explanation as being plausible. The applicant provided a birth date of [Date 2] at his entry interview. The chances of the applicant subsequently providing a birth certificate containing the exact same date by error are so farfetched that the Tribunal concludes that the provision of the birth certificate listing a date of birth of [Date 2] was deliberate. The Tribunal does not accept that the provision of a bogus document was an "innocent, unintended or accidental matter".²
37. The Tribunal notes that the applicant is recorded in the delegate's decision (a copy of which was provided to the Department) as stating that he was unsure of his correct date of birth when he first arrived in Australia. The applicant did not repeat this explanation at the

²*Trevi v Minister for Immigration and Border Protection* (2014) 141 ALD 252 at [32].

hearing. In any event, the chances of the applicant erroneously giving a date of birth of [Date 2] when he first arrived in Australia and then subsequently providing a birth certificate listing the exact same date of birth are so farfetched that the Tribunal concludes that the applicant deliberately provided that date of birth at his entry interview. The provision by the applicant of the same date of birth at the entry interview and on the birth certificate at folio 85 is not a mere coincidence.

38. Accordingly, the Tribunal finds that the applicant does not have a reasonable explanation for providing a bogus document.

39. By way of summary, The Tribunal is satisfied that the applicant has presented a bogus Bangladeshi birth certificate as evidence of his identity. The Tribunal is not satisfied that the applicant has a reasonable explanation for providing a bogus document to the Department. Accordingly, consistent with s.91WA of the Act, the Tribunal must affirm the decision to refuse to grant the applicant a protection visa.

40. **CONCLUSION**

41. For the reasons given above, the Tribunal is satisfied that s.91WA(1) of the Act applies to the applicant and that, accordingly, grant of a protection visa is precluded by s.91WA of the Act.

DECISION

42. The Tribunal affirms the decision not to grant the applicant a protection visa.

Glen Cranwell
Member

ATTACHMENT - Extract from *Migration Act 1958*

5 (1) Interpretation

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

43.

44. **91WA Providing bogus documents or destroying identity documents**

45.

46. (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:

47. (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or

48. (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or

49. (ii) has caused such documentary evidence to be destroyed or disposed of.

50. (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:

51. (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and

52. (b) either:

53. (i) provides documentary evidence of his or her identity, nationality or citizenship; or

54. (ii) has taken reasonable steps to provide such evidence.

55. (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.